

HOUSE BILL REPORT

HB 1420

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to discrimination of volunteer fire fighters.

Brief Description: Prohibiting discrimination against volunteer fire fighters.

Sponsors: Representatives Hurst (co-prime sponsor), Roach (co-prime sponsor), Dunshee, Lovick, Woods, Jackley, Mielke, Wood, Carrell, Cooper, Sump, Hatfield, Pflug, Haigh, Conway, Reardon, Morris, Edmonds, Ruderman, O'Brien, Veloria, Poulsen, Morell, Kenney, Bush, Anderson, Cody, Santos, Rockefeller and Kessler.

Brief History:

Committee Activity:

Commerce & Labor: 2/6/01, 2/23/01 [DPS].

Brief Summary of Substitute Bill

- Prohibits an employer from discharging against a volunteer fire fighter because of leave taken related to a fire alarm or emergency call.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

In Washington, the general rule is that employment is "terminable at-will." In other words, an employer may discharge an employee at any time without cause, and an employee may quit employment at any time without cause.

Exceptions to the general rule that employment is "terminable at-will" have been enacted by Congress and the Legislature, and recognized by Washington courts. For example, an

employer may not discharge an employee for exercising rights under certain state and federal laws (e.g., the federal Family and Medical Leave Act and the state Minimum Wage Act). An employer also may not discharge an employee because he or she is a member of a protected class under the Washington Law Against Discrimination or other anti-discrimination laws. An employer may be liable for wrongful discharge for terminating an employee because he or she refused to commit an illegal act or because he or she performed a public duty.

Summary of Substitute Bill:

An employer is prohibited from discharging a volunteer fire fighter because of leave taken to respond to, work at, or return from forest fire fighting activities directed by a federal or state agency.

A volunteer fire fighter who is discharged because of such leave may file a complaint with the director of the Department of Labor and Industries within 90 days of the discharge. Upon receipt of a complaint, the director must investigate and determine whether the volunteer fire fighter was discharged because of such leave. The director also must send a notice of his or her determination to the volunteer fire fighter and the employer within 90 days of receipt of the complaint. If the director determines that the volunteer fire fighter was discharged because of such leave and the employer fails to reinstate the employee within 30 days of receipt of notice of the director's determination, the volunteer fire fighter may bring an action against the employer in superior court seeking reinstatement. Reinstatement must be with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the volunteer fire fighter's personnel file.

An employer is a person who employed 20 or more full-time equivalent employees in the previous year.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the volunteers and the leave that are protected. It applies only to volunteer fire fighters taking leave relating to forest fire fighting activities directed by a federal or state agency. It does not apply to volunteer fire fighters, volunteer emergency workers, or volunteer law enforcement officers on leave relating to other alarms of fire, emergency calls, or law enforcement duties.

The substitute bill creates an administrative remedy. Before bringing an action in superior court, the volunteer fire fighter must file a complaint with the director of the Department of Labor and Industries, the director must determine that the volunteer fire fighter was discharged because of leave relating to certain forest fighting activities, and the employer must fail to reinstate the employee within 30 days of receiving notice of the

director's determination.

The substitute bill modifies the damages that may be recovered. If the volunteer fire fighter prevails, the superior court may order reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the volunteer fire fighter's personnel file. The volunteer fire fighter may not recover other monetary damages or attorneys' fees and costs.

The substitute bill does not apply to businesses with less than 20 full-time equivalent employees in the previous year.

Appropriation: None.

Fiscal Note: Requested on February 20, 2001.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Volunteer fire fighters need protection. They should not lose their job or their benefits for reasons related to volunteer fire fighting activities. Volunteers are critical to fire protection in rural areas. It is already difficult to recruit volunteers. Anything that makes it more difficult to volunteer is a problem. One volunteer fire fighter was disciplined because he was late to work after returning from a fire. Another volunteer fire fighter was discharged because she was injured while fighting a fire and was temporarily disabled. Although these incidents are infrequent, they are traumatic to volunteers and their families.

Testimony Against: The duties are too broadly defined; they go far beyond responding to fires and emergencies. The remedy is not acceptable; some sort of administrative remedy is needed. A provision recognizing undue hardships or exempting small businesses is necessary. This is not a pervasive problem.

Testified: (In support) Representative Hurst, co-prime sponsor; Representative Roach, co-prime sponsor; T.J. Nedrow, Washington State Fire Fighters' Association; Dan Packer, East Pierce County Fire and Rescue; Alan Predmore, city of Buckley Fire Department; and Brigette Smith, Board for Volunteer Fire Fighters and Law Enforcement Officers.

(With concerns) Clif Finch, Association of Washington Business.